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for Proposal (“RFP”), Vendor Qualification Survey (“VQS”), and Technical Requirements Documents (“TRD”) (collectively “procurement documents” or “RFP documents”) for notice and comment.³⁶ The VQS specifically delineated the neutrality criteria for the next LNPA and required each bidder to submit a neutrality opinion letter.³⁷ During a discussion on the proposed neutrality requirements, Neustar informed the Commission that “manufacturer[s] of telecommunications network equipment....were specifically disqualified from the original 1997 LNPA bidding process.”³⁸ But the Commission chose not to include this prohibition in its neutrality requirements. And Neustar, by failing to request the inclusion of this language in the final VQS and urging the Commission to accept the documents as written, has no lawful right to argue for a new rule now.³⁹

³⁶ *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract, Pleading Cycle Established*, Public Notice, DA 12-1333, 27 FCC Rcd. 11,771 (Wireline Comp. Bur. 2012) (“2012 Procurement Documents Public Notice”).

³⁷ *Id.* at 11,941-43, VQS §§ 3.4-3.5.

³⁸ Letter from Aaron M. Panner, Counsel for Neustar, to Marlene Dortch, Secretary, FCC at 3, CC Docket No. 95-116, WC Docket Nos. 07-149 and 09-109 (filed Sept. 11, 2012) (“Neustar Sept. 11, 2012 Letter”).

³⁹ *Id.* at 2 (“The neutrality requirements in the *RFP Documents* are rooted in the statute and the Commission’s regulations, including the rules that apply to the North American Numbering Plan Administrator (‘NANPA’) and the Pooling Administrator (‘PA’).”) (emphasis in original).

2. Telcordia's Parent Company Ericsson Is Not Subject to Undue Influence, and Even If It Were, the Proposed Safeguards Would Prevent Any Undue Influence on Telcordia.

a. Neustar's Manufactured Concerns of Bias Do Not Comport with Reality.

Neustar next argues that Telcordia is subject to undue influence because its corporate parent owns another company, Ericsson Inc., that has entered MSAs with wireless providers and because it is a manufacturer of telecommunications equipment. Neustar claims that because of its subsidiary's "close relationship with Sprint and T-Mobile,"⁴⁰ Ericsson would have an incentive to favor those two entities over other carriers and would attempt to influence Telcordia to do so. Neustar further claims that carriers other than Sprint and T-Mobile would be hesitant to trust Telcordia with their sensitive business information.⁴¹

Neustar's trumped-up concerns are baseless. The NANC, whose membership is required to be balanced and includes representatives of numerous carriers—large and small—across all segments,⁴² unanimously recommended Telcordia as the next LNPA. This includes carriers such as AT&T and Verizon that directly compete nationally with T-Mobile and Sprint. It also includes wireline carriers, cable VoIP providers and over-the-top VoIP providers. The RFP indicated that the NAPM (and by extension the NANC) would initially determine whether

⁴⁰ Neustar Comments at 20.

⁴¹ *Id.*

⁴² 41 C.F.R. §102-3.30(c) ("An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.") Indeed, the NANC's membership includes representatives of large and small ILECs, CLECs (including Bandwidth.com, Level 3 and XO—all of which provide telephone numbers and manage porting for smaller providers—and, CompTel, the trade association representing CLECs), wireless providers, cable VoIP providers, and over-the-top VoIP providers (including Vonage, which has trialed direct assignment of numbers rather than through a CLEC).

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bidders met the neutrality requirement,⁴³ and nothing in the FoNPAC or SWG report suggests that any member of those bodies questioned Telcordia's neutrality. If the concerns were legitimate and realistic, surely some member of the FoNPAC or NANC would have objected. None did.

Moreover, Neustar's allegations of bias make no sense. Ericsson provides equipment and services to a wide variety of different providers—many of which are competitors—across telecommunications industry segments.⁴⁴ As a result, it would not be possible for a single provider to exercise undue influence over Ericsson at the expense of other providers—discriminating in favor of one customer would damage Ericsson's business relationships with other customers. This is particularly true in the context of Ericsson Inc.'s MSAs, under which Ericsson serves multiple companies, some of which are competitors. As a result, Ericsson Inc.'s MSA customers demand that it act with the utmost neutrality—including by maintaining the confidentiality of their data and by implementing strict firewalls between the parts of the company that administer one MSA and the parts that administer another.⁴⁵ That idea is consistent with the Commission's prior precedent, which has recognized that influence by “a broad group” of telecommunications providers “that might include disparate TSP interests may well promote, and not undermine, neutrality.”⁴⁶

⁴³ VQS § 3.5.

⁴⁴ Telcordia Bid, VQS, Attachment to Question 3.5, at 11 ¶ 10 (Telcordia06084).

⁴⁵ *See, e.g.*, Telcordia Bid, VQS, Attachment to Question 3.5, Certificate of Ericsson, Annex B at 1 (noting that the MSAs “require that we operate in a vendor neutral and unbiased manor.”).

⁴⁶ *North American Numbering Plan Administration; Neustar Inc. Request to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership*, FCC 04-203, 19 FCC Rcd. 16,982, 16,991-92 ¶ 24 (2004). (“2004 Safe Harbor Order”).

Nor would it make sense for Ericsson to favor wireless providers *generally* over wireline providers. Ericsson provides operations support/business support services (OSS/BSS) for a wide range of wireless, wireline, cable, and IP customers. Favoring *wireless* customers would inevitably anger competing wireline and cable customers. Moreover, even among Ericsson's so-called "wireless" customers, many (including AT&T, Verizon and Sprint) also provide *wireline* services, rendering the notion of favoritism by category of provider unrealistic.

b. Ericsson Inc.'s Managed Services Agreements Do Not Subject It to Undue Influence.

In the United States, Ericsson "provides managed services to a range of telecommunications customers" through Ericsson Inc. Ericsson Inc.'s managed services agreements provide that it "takes responsibility for network design, planning, and building, including day-to-day operations, while the carrier retains responsibility for strategy, marketing and customer care."⁴⁷ These MSAs are arms-length contractual relationships—they are not joint ventures and do not include revenue-sharing agreements. Moreover, Ericsson Inc. has MSAs with ****BEGIN HIGHLY CONFIDENTIAL**** ****END HIGHLY CONFIDENTIAL**** entities, only ****BEGIN HIGHLY CONFIDENTIAL**** ****END HIGHLY CONFIDENTIAL**** of which are telecommunications services providers.

Neustar does not argue that any entities in contracts with members of the wireless or the telecommunications industry should be precluded from being the LNPA. Such a blanket prohibition would preclude Neustar itself from being the LNPA. According to Neustar's annual report, Neustar's "clients include Verizon Communications Inc., AT&T Inc., Comcast Corporation, and Time Warner Cable Inc., as well as emerging providers of voice over Internet

⁴⁷ Telcordia Bid, VQS, Attachment to Question 3.5, at 11 ¶ 10 (Telcordia06084).

protocol, or VoIP, services, social media, and message aggregators.”⁴⁸ The report notes that “[w]ithin this industry, we provide numbering services, caller identification services, order management services, and marketing analytics.”⁴⁹ Similarly, Neustar’s website boasts that “[o]n behalf of the CTIA and wireless operators,” it “manages and operates the US Common Short Code Registry,” which “enables marketers and nonprofit organizations to lease five- or six-digit common short codes.”⁵⁰ And Neustar also offers CNAM services to telecommunications services providers.⁵¹

Accordingly, Neustar makes the more limited argument that specific provisions of the MSAs render Ericsson subject to undue influence by particular wireless providers. That argument is baseless.

i. The Sprint MSA.

Neustar claims that Ericsson Inc.’s MSA with Sprint allows Sprint to “exert[] significant control over Ericsson’s ‘management and policies’ ‘by contract.’”⁵² This is a gross distortion. Neustar first touts the *size* of the Sprint contract—citing media reports valuing the seven-year agreement at five billion dollars to suggest that its magnitude would subject Ericsson to undue

⁴⁸ 2013 Neustar Annual Report at 4, available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjI5NzEwfENoaWxkSUQ9LTF8VHlwZT0z&t=1>. (last accessed Aug. 7, 2014).

⁴⁹ *Id.*

⁵⁰ NEUSTAR, *Mobile Outreach: How Nonprofit Organizations Can Use Common Short Codes to mobilize Millions of Volunteers, Dollars and Supporters*, at 4, available at <http://www.neustar.biz/corporate/docs/how-nonprofits-can-use-common-short-codes-to-mobilize-volunteers-and-donations.pdf>. (last accessed Aug. 7, 2014).

⁵¹ NEUSTAR, Caller Name Services, <http://www.neustar.biz/services/caller-name-services> (last accessed Aug. 7, 2014).

⁵² Neustar Comments at 16 (citation omitted).

influence by Sprint. But the numbers quoted by Neustar would amount to about \$700 million per year, which is only about 2 percent of the \$33 billion in net sales (SEK 227 billion) reported in Ericsson's 2013 annual report.⁵³ Given Ericsson's diverse range of other business, a contract of this magnitude does not by any means suggest that Sprint controls Ericsson.

Neustar next quotes a number of contractual provisions from the Sprint MSA, implying that they cede control of the company to Sprint. As a threshold matter, the contract from which Neustar quotes is no longer in effect as of July 2013.⁵⁴ More importantly, however, even at the time it was in effect, the contract made clear that Ericsson and Sprint remained completely independent entities and were not ****BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

****END HIGHLY CONFIDENTIAL**** Ericsson Inc., as supplier, was responsible for ****BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

****END HIGHLY CONFIDENTIAL**** It also had ****BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

****END HIGHLY CONFIDENTIAL**** The current MSA between Sprint and Ericsson Inc. contains the same provisions.⁵⁵

The provisions that Neustar quotes out of context do not allow Sprint to control Ericsson's management or policies in any way relevant to a neutrality analysis. On the contrary, they provide that Ericsson Inc.'s employees who provide services to Sprint will abide by Sprint's

⁵³ 2013 Ericsson Annual Report at 4, *available at* http://www.ericsson.com/thecompany/investors/financial_reports/2013/annual13/sites/default/files/download/pdf/EN_-_Ericsson_AR2013.pdf (last accessed Aug. 7, 2014).

⁵⁴ Declaration of Travis Baker at 1 ¶ 4 (attached as Exhibit A) ("Baker Declaration").

⁵⁵ *Id.* at 2 ¶ 6.

Code of Supplier Conduct, which requires compliance with the law, maintenance of a drug free workplace, and similar provisions—none of which would allow Sprint to pressure Ericsson to behave in a non-neutral way.⁵⁶ Similarly, the contract requires Ericsson Inc. to abide by certain

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CONFIDENTIAL** But again, the contract makes clear that these policies all involve Ericsson Inc.'s *performance of services for Sprint* or *conduct while on Sprint property*—for example,

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[REDACTED]

[REDACTED]

[REDACTED] ****END HIGHLY CONFIDENTIAL**** Again, these provisions plainly do not allow Sprint to influence Ericsson's conduct in any way that is relevant to a neutrality analysis.

Neustar similarly objects that the MSA establishes mandatory "Service Levels," or "specific performance metrics measuring the quality [and] efficiency" of network services, that Ericsson must meet to perform the contract."⁵⁷ But Neustar's own contract with members of the wireless industry requires it to meet service levels set by CTIA.⁵⁸ In both cases, the fact that a

⁵⁶ SPRINT, Code of Supplier Conduct, <http://investors.sprint.com/file.aspx?IID=4057219&FID=1001176117> (last accessed Aug. 7, 2014).

⁵⁷ Neustar Comments at 16.

⁵⁸ See Amended and Restated Common Short Code License Agreement Between CTIA—The Wireless Association and Neustar, Inc. at 115-123, Ex. F, effective June 2, 2008, *available at*

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contractor has to meet service levels—completely unrelated to number portability—set by another entity is simply irrelevant to whether the entity establishing those service levels could “unduly influence” the contractor in any relevant way.

Oddly, Neustar also argues that Ericsson actually controls Sprint—the opposite of its claim discussed directly above. For this absurd conclusion, Neustar points to a garden-variety provision emphasizing that Sprint and Ericsson Inc. are ****BEGIN HIGHLY**

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****END HIGHLY CONFIDENTIAL**** That provision makes clear that ****BEGIN**

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further explains the implications of that statement:

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http://yahoo.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHtmlSection1?SectionID=6093247-317731-749867&SessionID=XLGvFCgZHmUsZ42 (last accessed Aug. 7, 2014) (“CTIA/Neustar Agreement”).

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Once again, however, such a garden-variety independent-contractor provision does not suggest that Ericsson controls Sprint any more than Neustar's contract with CTIA, which contains a substantially similar provision, makes Neustar subject to the control of the wireless industry.⁵⁹

ii. The Clearwire MSA.

Neustar argues that Ericsson Inc.'s MSA with Clearwire demonstrates that Ericsson has a vested interest in numbering.⁶⁰ Neustar then quotes certain provisions of a now-defunct MSA between Clearwire and Ericsson Inc. to suggest that Ericsson is responsible for ordering numbers on behalf of its MSA customers and for handling numbering problems and related numbering issues. The MSA between Clearwire and Ericsson Inc., however, *is no longer in effect*.⁶¹ But

⁵⁹ CTIA/Neustar Agreement at 34 § 10 ("Each Party acknowledges that the relationship between CTIA and Registry is that of an independent contractor. This Agreement creates no agency, partnership, joint venture or employment relationship between the Parties. Personnel utilized by Registry in the performance of Registry Services (hereinafter "Registry's Employee(s)") shall at all times remain under Registry's exclusive control and direction and shall be employees of Registry and not employees of CTIA or of any partnership or joint venture between CTIA and Registry. Registry further acknowledges that it is not considered an affiliate or subsidiary of CTIA, and is not entitled to any employee rights or benefits of CTIA. CTIA also acknowledges that it is not considered an affiliate or subsidiary of Registry and is not entitled to any employee rights or benefits of Registry. Neither Party shall have any power or authority to act for or on behalf, bind or commit the other. Nothing in this Agreement shall be deemed to render CTIA liable for any of the debts or obligations of Registry that Registry may have to any Third Party nor shall be deemed to render Registry liable for any of the debts or obligations of CTIA that CTIA may have to any Third Party.").

⁶⁰ Neustar Comments at 17, 23.

⁶¹ Baker Declaration at 3 ¶ 9.

Neustar claims that the agreement “whether or not it remains in effect, illustrates the nature of Ericsson’s managed services business.”⁶² Once again, however, this is false. After Sprint acquired Clearwire, the MSA between Clearwire and Ericsson Inc. was terminated and merged with the Sprint MSA.⁶³ The Sprint MSA specifically provides that responsibility for certain

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****END HIGHLY CONFIDENTIAL**** would be transferred back to Sprint.⁶⁴ Moreover,

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Moreover, even when Ericsson Inc. did—in the past—have numbering responsibilities, it bears emphasis that, those responsibilities never included number portability or involved submitting any requests or initiating transactions with the NPAC.⁶⁵ To the extent that Ericsson Inc. had responsibility for “numbering” at all, its responsibilities never required it to initiate transactions with the NPAC, nor did its contractual duties depend on its ability to successfully port a number through the NPAC or to obtain a certain result from the LNPA.⁶⁶ In short, Ericsson Inc.’s now-terminated contract with Clearwire does not create any “undue influence” on Ericsson.

⁶² Neustar Comments at 17.

⁶³ Baker Declaration at 3 ¶ 10.

⁶⁴ *Id.* at 4 ¶ 11 ****BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

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⁶⁵ *Id.* at 4 ¶ 13.

⁶⁶ *Id.*

c. Even if Ericsson Were Somehow Subject to Undue Influence, the Proposed Safeguards Create a Firewall Between Ericsson and Telcordia.

Even if Ericsson were subject to undue influence by a wireless provider—which it is not—that undue influence would be relevant only if it would cause *Telcordia* also to be subject to undue influence. Neustar asks the Commission to assume that because *Telcordia* and Ericsson Inc. are owned by Ericsson, any undue influence would automatically bleed through.⁶⁷ But this argument ignores the numerous safeguards that *Telcordia* has proposed to ensure that *Telcordia* would be protected from any possible perceived undue influence:

- Effective January 1, 2013, all *Telcordia* operations and employees other than *Telcordia*'s former Interconnection Business Unit have been transferred to other Ericsson legal entities. The remaining *Telcordia* entity consists solely of the former Interconnection Business Unit, and provides number portability, anti-theft and anti-counterfeit device registries, information services, mobile messaging, and spectrum management services.⁶⁸ As a result, there is no reason to think that *Telcordia* will be used to “boost” Ericsson's managed services business, as Neustar claims.⁶⁹
- *Telcordia* has its own financial and accounting systems, compensation plan, health and welfare benefits, and human resources organization.⁷⁰ This further enhances *Telcordia*'s independence.
- *Telcordia* will have its own board of directors, a majority of whom will be outside independent directors. The Board will have a fiduciary duty to protect the interests of *Telcordia*—not Ericsson.⁷¹

⁶⁷ Neustar Comments at 23 (“Ericsson is the sole shareholder of its subsidiary; under the Commission's rules (and as a matter of law and common sense), Ericsson thus controls its subsidiary—something that goes well beyond mere undue influence or indirect affiliation.”).

⁶⁸ *Telcordia* Bid, VQS, Attachment to Question 3.5, Ex. A, at 2 ¶ 1 (*Telcordia*06092).

⁶⁹ Neustar Comments at 15.

⁷⁰ *Telcordia* Bid, VQS, Attachment to Question 3.5, Ex. A, at 2 ¶ 3 (*Telcordia*06092).

⁷¹ *Id.* at 2 ¶ 4.

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- The Board will be responsible for constituting a neutrality compliance committee and implementing appropriate safeguards to ensure neutrality, including neutrality audits by third-party auditors of Telcordia's operations, consistent with FCC requirements.
- Telcordia board members will not simultaneously serve as an officer or director of a Telecommunications Service Provider, nor will any board member have an ownership or voting interest of greater than ten percent in any Telecommunications Service Provider.
- All employees, contractors, officers, and directors of Telcordia will be bound by the LNPA Code of Conduct.
- All employees, contractors, officers, and directors of Telcordia are bound by the Ericsson Code of Business Ethics with respect to any work involving LNPA services.
- If Telcordia receives notice from Sungard AS that it or any affiliate has begun providing switched services that utilize number portability, Telcordia will notify the NAPM and the FCC within 7 business days.

Notably, the LNPA Code of Conduct referenced in the safeguards specifically prohibits Telcordia's employees, officers, or directors from showing any preference to a TSP with respect to LNPA services, and it prohibits the misuse of LNP user data or proprietary information.⁷² Moreover, the safeguards and the Code of Conduct are backed up by an independent-audit requirement so that an independent third party that will frequently review and assess Telcordia's operations to ensure that its operations are neutral.⁷³

As USTA and CTIA have recognized, these safeguards ensure the LNPA's neutrality,⁷⁴ just as the safeguards imposed by the Commission in the *Warburg* Order did. There, the Commission allowed Warburg to be the largest shareholder in Neustar notwithstanding that "Warburg, by virtue of its investments in telecommunications service providers, would have an

⁷² *Id.* at 1 ¶¶ 1-2.

⁷³ *Id.* at 2 ¶ 5.

⁷⁴ USTA/CTIA Reply Comments at 11.

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interest in the outcome of numbering administration and activities.”⁷⁵ Notably, *Warburg* presented a much more difficult case, because Warburg controlled both the LNPA and a telecommunications carrier, and had a significant minority interest in a second telecommunications carrier that had stated it might trial switched voice services.⁷⁶

Neustar argues that the safeguards advanced by Telcordia are inadequate because they are not identical to the safeguards that the Commission imposed in *Warburg*. Neustar complains, for example, that the proposed Code of Conduct binds only “Telcordia’s employees, officers, and directors” and does not apply to Ericsson’s employees as was the case in *Warburg*.⁷⁷ And it complains that Telcordia’s proposed safeguards are not identical to a long list of conditions imposed on Neustar when it became a public company. Neustar insists that the Commission’s precedents are “[b]inding” and therefore that the Commission must reject Telcordia’s proposed safeguards because they are not identical to the safeguards the Commission imposed previously.

The wooden approach proposed by Neustar is both inappropriate and incorrect as a matter of law. Even when interpreting statutes, the Commission can adopt a different interpretation from one that it originally adopted so long as it can provide a reasoned explanation.⁷⁸ The first interpretation is not “binding.” Here, however, the Commission need

⁷⁵ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. at 19,810 ¶ 29.

⁷⁶ *Id.* at 19,810 ¶ 29 n.106 (“For example, we note that Covad, on June 7, 1999, issued a press release announcing that it has completed trials that successfully demonstrate its ability to provide voice over DSL. While this is not determinative of Covad’s intent to obtain numbering resources in the future, it is indicative that Covad’s market position continues to evolve and demonstrates Covad’s intent to compete head to head with entities that do utilize numbering resources.”).

⁷⁷ Neustar Comments at 28-29.

⁷⁸ *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-16 (2009); *Verizon v. FCC*, 740 F.3d 623, 636-37 (D.C. Cir. 2014).

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not change its interpretations. The undue-influence analysis is a flexible standard that “affords [the Commission] broad discretion.”⁷⁹ The Commission has used that discretion to tailor neutrality safeguards to address the specific circumstances of the company at issue. That is why, for example, the Commission imposed different and additional neutrality safeguards on Neustar when it became a public company, noting that “the regulation of NeuStar as a privately held company would differ in some respects from the regulation of NeuStar as a publicly owned company.”⁸⁰ Moreover, the Commission has never held that the particular set of safeguards it imposed on Neustar in the Warburg transaction is the *only* set of safeguards that would allow any company to be neutral. On the contrary, the Commission found that “the voting trust structure proposed by the parties will adequately prevent Warburg or its affiliates from exercising undue influence on the NANPA in its numbering administration functions.”⁸¹ So too here. The safeguards that Telcordia proposed will ensure that there is not even the possibility of a perception that Ericsson could undermine the neutrality of LNPA administration.

Neustar attempts to quibble with this conclusion, claiming that Telcordia’s outside board of directors—which has more independent members than the one approved by the Commission in *Warburg*⁸²—is not truly independent because they will owe their fiduciary duties to Ericsson. The point of an independent board, however, is to ensure that Telcordia’s directors owe fiduciary

⁷⁹ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. at 19,808 ¶ 24.

⁸⁰ *2004 Safe Harbor Order*, 19 FCC Rcd. at 16,982 ¶ 2.

⁸¹ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. at 19,811 ¶ 31.

⁸² In the *Warburg, Pincus Transfer Order*, Neustar’s board consisted of two Warburg representatives, two unaffiliated directors, and one Neustar executive. *Id.* at 19,802 ¶ 12. By contrast, Telcordia’s safeguards include a *majority* of independent directors (*i.e.*, 3), one Ericsson representative, and a Telcordia executive.

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duties to Telcordia as a company—and not to Ericsson. This point is only underscored by the LNPA Code of Conduct, which applies to Telcordia's board members and prohibits them from taking actions that would favor one telecommunications service provider over another or from sharing LNP proprietary information.

Ericsson has also made it clear that it is in Ericsson's corporate interest for Telcordia to be neutral.⁸³ Indeed, in a letter attached to Telcordia's bid, Ericsson affirmed its intent to "assure the neutrality of Telcordia in the USA with respect to the LNPA contract" and "to install a governance structure which will ensure all U.S. neutrality requirements are upheld." Ericsson further stated that it would "take whatever actions are necessary to address any issues raised by the Federal Communications Commission or other governing bodies for neutral governance and operation."⁸⁴

Finally, in evaluating the adequacy of Telcordia's neutrality safeguards, there is nothing in Section 251(e) or the Commission's rules that prevents the Commission from balancing the extreme unlikelihood here of any discriminatory conduct against the cost to industry and consumers from disqualifying Telcordia. In addition to Section 251(e), the Commission also has the responsibility under Section 201(b) to ensure that charges "in connection with" common carrier services are just and reasonable. It would be irrational—and contrary to Commission actions in similar contexts—to interpret 251(e)'s requirement of impartiality to require foreclosing even remote possibilities of discriminatory incentive at the cost of ****BEGIN**

⁸³ See Telcordia Bid, VQS, Attachment to Question 3.5, Certificate of Ericsson, Annex B at 1-2 (Telcordia06131-Telcordia06132).

⁸⁴ *Id.* at 1 (Telcordia06131).

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3. **Telcordia's Experience Providing LSMS/SOA Systems Does Not Present a Neutrality Problem.**

The LNP Alliance suggests that ****BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

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[REDACTED] ****END HIGHLY CONFIDENTIAL**** This is a red herring.

Neustar itself provides LSMS/SOA systems as well as pre-porting products to both wireless and wireline customers. Yet there is no indication that Neustar has had any opportunity to leverage its control over the NPAC into a monopoly over LSMS/SOA services. On the contrary, as

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HIGHLY CONFIDENTIAL** Telcordia is the leading provider of LSMS/SOA services even though it does not currently run the NPAC. Neustar's control over the NPAC has not allowed it to monopolize LSMS/SOA services.

⁸⁵ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, 17,711 ¶ 124 (2011) ("As we explained with respect to the budget for the Schools and Libraries program, we 'must balance [our] desire to ensure that schools and libraries have access to valuable communications opportunities with the need to ensure that consumer rates for communications services remain affordable. End users ultimately bear the cost of supporting universal service, through carrier charges.'"); see also *In re FCC 11-161*, 753 F.3d 1015, 1143 (10th Cir. 2014) ("[T]he FCC has broad discretion to balance competing policy goals"); *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, 28 FCC Rcd. 8618, 8694-8706 ¶¶ 188-216 (2013), petition for review pending, *Sorenson Communications v. FCC*, No. 13-1215 (D.C. Cir.).

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The reason that neither Neustar's nor Telcordia's LSMS/SOA businesses raise neutrality issues likely is that the NPAC is a highly specified system. Because the design of the system is so highly specified, there simply is not any real opportunity to design the system in order to favor one type of LSMS/SOA system over another.

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[REDACTED] ****END HIGHLY CONFIDENTIAL**** but this suggestion is equally nonsensical. The argument is premised on the idea that *any* LNPA that also has an LSMS/SOA business would have the incentive to manipulate the NPAC in order to favor its own LSMS/SOAs and thus increase its share of the LSMS/SOA market. This supposed incentive does not depend on market share.

C. Sungard AS Is Neutral and Is, in any Case, Not Subject to the Three-Prong Neutrality Analysis.

As Telcordia explained in its opinion letter, Sungard AS—the subcontractor it intends to use to host its data centers—is also neutral. Sungard AS is not a TSP, an IVP, or an affiliate of such an entity; it does not derive the majority of its revenues from or issue the majority of its debt to such an entity; and it is not subject to undue influence. Neustar nevertheless asks the Commission to disqualify Telcordia's bid on the theory that Sungard AS does not meet the neutrality requirements. Neustar does not dispute that Sungard AS meets the second criterion of the neutrality analysis but argues that Sungard AS is an affiliate of a TSP or IVP and that Sungard AS is subject to undue influence. Neustar's arguments are meritless.

1. As a Hardware/Software Provider, Sungard AS Is Not Subject to the Three-Prong Neutrality Analysis.

The RFP's neutrality requirements do not apply to a subcontractor such as Sungard AS that will run a data center. The VQS states that a subcontractor which provides *NPAC services* or is included in providing those services must be neutral: "[T]he Primary Vendor (and all Sub-Contractors that the Primary Vendor *will engage or include in providing the Services*)" must meet the neutrality criteria.⁸⁶ But the VQS also makes clear that subcontractors need not be neutral if they merely supply the computer and software systems that are used by the primary vendor to provide NPAC services: "It is possible for a Primary Vendor that is precluded from being the NPAC/SMS Administrator may be allowable as another Primary Vendor's Sub-Contractor (hardware/software provider) if that Primary Vendor qualifies as a Neutral Third Party in responding to the RFP."⁸⁷ This distinction is rooted in common sense—a subcontractor who is merely providing hardware/software services (such as a data center) is not in any position to influence the neutrality of the LNPA and need not be neutral.

Telcordia has proposed to use Sungard AS only to run its data center and to manage certain Oracle databases.⁸⁸ Sungard AS would not have any data-input functions or be otherwise involved with providing NPAC services, and in no case would it have any discretionary functions. Accordingly, as a "hardware/software provider," it would not have any opportunity to influence the neutrality of the NPAC, and there is no reason to subject it to a neutrality analysis.

⁸⁶ VQS § 3.4 (emphasis added).

⁸⁷ *Id.*

⁸⁸ Neustar asserts that Sungard will be "in charge of administering the database itself." Neustar Comments at 43. This statement is highly misleading. Sungard will run the data center and manage certain Oracle databases, which is largely a function of making sure the software is up to date. It will not, as Neustar seems to suggest, input data into the databases.

2. **Sungard AS Is Neutral.**

Neustar, ignoring the plain language of the VQS, nevertheless argues that the Commission should disqualify Telcordia under the theory that Sungard AS is not neutral. Neustar also argues that Sungard AS is an affiliate of a TSP and that it is subject to undue influence. As explained below, both arguments are wrong.

a. **Sungard AS is Not an Affiliate of a TSP or an IVP.**

i. **Silver Lake and TPG's Interest in Avaya Does Not Make Avaya an "Affiliate" of Sungard AS under the *Warburg* Analysis.**

As explained in Telcordia's opening comments, in April of this year, Sungard AS's corporate parent—SunGard Data Systems Inc. ("SDS")—spun it off. Sungard AS is now owned 100 percent by ****BEGIN CONFIDENTIAL**** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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None of these owners individually has *de jure* or *de facto* control of Sungard AS.

Neustar suggests that Sungard is not neutral because two of its owners also own interests in Avaya, which is a TSP. As explained in the opinion letter, however, Sungard AS is not an affiliate of Avaya under the *Warburg* analysis.

Again, in *Warburg*, Lockheed Martin proposed to transfer its NANPA responsibilities to Neustar, a newly formed entity that was to be owned in large part by Warburg Pincus Equity Partners (“WPEP”) and indirectly by Warburg, Pincus & Co. (“Warburg”). In applying the first criterion of the neutrality analysis, the Commission determined that Warburg and WPEP “have several affiliate relationships with telecommunications service providers through their ownership of an[d] equity interest in those companies.”⁸⁹ Nonetheless, even though WPEP would own interests in both Neustar *and* the telecommunications providers, the Commission determined that NeuStar was *not* an affiliate of those telecommunications providers because no TSP would “1) own a 10 percent or more equity interest in NeuStar; 2) have the power to vote 10 percent or more of NeuStar’s securities; or 3) have the power to direct NeuStar’s management and policies.”⁹⁰

The same is true here. Because Avaya does not “1) own a 10 percent or more equity interest in [Sungard AS]; 2) have the power to vote 10 percent or more of [Sungard AS’s] securities; or 3) have the power to direct [Sungard AS’s] management and policies,”⁹¹ Avaya and Sungard AS are not affiliates under the *Warburg* analysis. Neustar attempts to differentiate *Warburg* on the ground that “[t]he finding in *Warburg* was predicated on Warburg reducing its

⁸⁹ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. 19,809 ¶ 26 n.103.

⁹⁰ *Id.* at 19,809 ¶ 26.

⁹¹ *Id.* at 19,809 ¶ 26.

ownership stake to less than 10% and placing the remainder of its interest in an irrevocable voting trust,”⁹² but the Commission gave no indication that its analysis of whether Neustar was an affiliate of a telecommunications service provider was predicated on the existence of a voting trust; to the contrary, the Commission concluded that its three-prong definition of affiliate had not been met. In short, Avaya does not meet the three-prong definition of affiliate.

ii. SNS is Neither a TSP Nor an Affiliate of Sungard AS.

Neustar also argues that Sungard AS is not neutral because it is an affiliate of SunGard NetWork Solutions Inc. (now named Sungard Availability NetWork Solutions, Inc.) (“SNS”), which Neustar claims is a TSP. This is wrong for two reasons. *First*, SNS is not a provider of telecommunications services. As the Commission explained in *Warburg*, “telecommunications service providers are carriers that hold themselves out ‘to service indifferently all potential users’ of common carrier services.”⁹³ SNS does not, however, offer common carrier services to the public. It offers only enhanced services. Specifically, SNS offers dedicated, non-switched data circuits to provide to its affiliates’ customers solely in connection with their use of Sungard AS data services (*i.e.*, hosting, managed services, recovery services). Moreover, SNS has represented that it has no intention of *ever* offering regulated telecommunications services—and in particular, as stated in the opinion letter, it has no intention of offering switched voice services that would use number portability.

Neustar suggests that SNS is a provider of telecommunications services because it has registered to provide telecommunications services in three states as required by the state public

⁹² Neustar Comments at 39.

⁹³ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. at 19,809 ¶ 25; *see also NANP Administration Third Report and Order*, 12 FCC Rcd. at 23,077 ¶¶ 70-71.

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utility regulation. But as Telcordia has previously explained, these registrations were made “out of an abundance of caution” because state utility regulations were “sufficiently broad” to potentially cover its enhanced services.⁹⁴

The limited nature of SNS’s offerings is reflected in the filings before the relevant state public utility commissions. SNS obtained its certificates as part of an acquisition of InFlow Group, Inc. In the North Carolina and Minnesota applications seeking approval for SNS to acquire Inflow’s certificates of public convenience and necessity, the parties explained that (a) InFlow offered its services to “business customers who locate their servers and other equipment in InFlow’s data centers;” (b) those services “are offered only as a component of a broader, enhanced service offering provided by InFlow to its customers” and are not sold “to customers on a stand-alone basis;” and (c) “the parties to this application have no present intention to offer traditional local exchange or exchange access voice services in the future.”⁹⁵ Nothing has changed with respect to those services since those filings almost a decade ago. SNS does not offer local exchange or exchange access services, does not offer telecommunications services on a standalone basis, and has never informed those state of any intention to do so.

⁹⁴ Telcordia Bid, Letter from John Nakahata to Dan Sciallo, FoNPAC, and Sanford C. Williams, FCC, at 12 (filed Nov. 13, 2013) (Telcordia06428).

⁹⁵ *Application of Inflow, Inc., and Sungard NetWork Solutions Inc. for Approval of Transfer of Control*, Application for Consent to Assignment of Certificates of Public Convenience and Necessity and Transfer of Control of Certificate Holder at 2-3 (North Carolina Utilities Commission, filed Jun 30, 2005); *InFlow, Inc., Application for Consent to Transfer of Assets and Liabilities* at 2-3 (Minn. Public Utilities Commission, filed Oct. 11, 2005). The Oregon application was submitted on a form provided by the state, but similar representations regarding the limited nature of the services offered were included in correspondence accompanying the application.

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Second, for the same reason that Avaya and Sungard AS are not affiliates, SNS and Sungard AS do not meet the definition of affiliate. SNS does not “1) own a 10 percent or more equity interest in [Sungard AS]; 2) have the power to vote 10 percent or more of [Sungard AS’s] securities; or 3) have the power to direct [Sungard AS’s] management and policies”⁹⁶ and thus is not a Sungard AS affiliate.

iii. **Rignet.**

Neustar finally argues that Sungard AS is an affiliate of an entity named Rignet under the theory that both Sungard AS and Rignet are owned by “KKR.” This is incorrect, and in making this assertion, Neustar has conflated a number of distinct private equity funds. Sungard AS is owned by ****BEGIN CONFIDENTIAL**** ****END CONFIDENTIAL**** By contrast, Rignet is owned by ****BEGIN CONFIDENTIAL**** ****END CONFIDENTIAL**** Although both funds have the same general partner and are managed by KKR & Co. L.P., these are distinct private equity funds—presumably with distinct sets of investors. As a result, it would be a breach of fiduciary duty for KKR to attempt to use one fund’s ownership in Sungard AS to the advantage of the distinct group of investors in Rignet. Doing so would prejudice the Sungard AS investors by threatening the Sungard AS contract.⁹⁷

⁹⁶ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. at 19,809 ¶ 26.

⁹⁷ Similarly, Blackstone Capital Partners VI, L.P. owns a ****BEGIN CONFIDENTIAL**** ****END CONFIDENTIAL**** in Vivint, Inc. But that does not pose a neutrality issue because Sungard AS is owned by different Blackstone funds—****BEGIN CONFIDENTIAL**** ****END CONFIDENTIAL****

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For that reason, Rignet and Sungard AS do not meet the *Warburg* test for affiliation. Rignet does not “1) own a 10 percent or more equity interest in [Sungard AS]; 2) have the power to vote 10 percent or more of [Sungard AS’s] securities; or 3) have the power to direct [Sungard AS’s] management and policies”⁹⁸ and thus is not a Sungard AS affiliate.

b. Sungard AS Is Not Subject to Undue Influence.

Even if the Commission were to determine that Sungard AS had an indirect affiliation with one or more TSPs, that does not end the analysis. As explained earlier, even if the primary vendor does not fully meet the requirements of the first two criteria of the neutrality analysis, the Commission may nonetheless find that it is neutral if it is not subject to undue influence by parties with a vested interest in numbering administration.⁹⁹ Moreover, the RFP stated that “[i]t is possible for a Primary Vendor that is precluded from being the NPAC/SMS Administrator may be allowable as another Primary Vendor’s Sub-Contractor (hardware/software provider) if that Primary Vendor qualifies as a Neutral Third Party in responding to the RFP.”¹⁰⁰

Sungard AS is not subject to undue influence. As the entity providing Telcordia’s data center, Sungard AS would not be capable of doing anything that could even conceivably influence the neutrality of LNP administration. Sungard AS does not have responsibility for entering data into databases or for determining the order in which ports are processed. Thus, even if it were subject to influence by a TSP—which as explained later, it is not—any influence would not affect the NPAC in any way. That is why, as explained above, the RFP did not even

⁹⁸ *Id.* at 19,809 ¶ 26.

⁹⁹ *NANP Administration Third Report and Order* 12 FCC Rcd. at, 23,081 ¶ 81.

¹⁰⁰ VQS § 3.4

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contemplate that the Commission would apply the neutrality analysis to a data center/infrastructure services contractor like Sungard AS.

Neustar argues that Sungard AS will be subject to undue influence because Glenn Hutchins—a board member of SDS—is now on the board of AT&T. This argument is moot following Sungard AS's spin-off, however, because Sungard AS's board now consists of

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****END CONFIDENTIAL**** has agreed to recuse himself from any decisions regarding the Telcordia contract.

Neustar also suggests that Sungard AS's private equity owners might attempt to unduly influence it because of their holdings in SDS and the other entities discussed above. That, however, is not possible as a matter of corporate law. Sungard AS is owned not only by the private equity companies discussed in Neustar's comments but also by ****BEGIN**

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Sungard AS's board members owe fiduciary duties to *all* of Sungard AS's owners—not just the private equity owners that have interests in telecommunications providers, and under basic principles of corporate law, they may not take actions that would harm Sungard AS in order to favor the TSP holdings of Sungard AS's majority shareholders. Importantly, *any* non-neutral